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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,652	12/08/2006	Henri Wautier	288710US0PCT	5663
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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
MAKSYMIONKO, JOHN M				
ART UNIT		PAPER NUMBER		
4145				
NOTIFICATION DATE		DELIVERY MODE		
05/01/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

# Office Action Summary

**Application No.**

10/573,652

**Applicant(s)**

WAUTIER ET AL.

**Examiner**

JOHN M. MAKSYMOKO

**Art Unit**

4145

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-34 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date 20060712, 20070430
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Specification*

1. The use of the trademarks Eltex and Priex has been noted in this application. They should be capitalized wherever they appear and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein

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were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 15-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pradel (US 2003/0092844).

Regarding claims 15-23 and 25-34, Pradel discloses a polymer composition (Abstract) comprising:

- more than 80% of a nonfunctionalized polyolefin (PO1) wherein the PO1 is a propylene homopolymer ([0011]) as recited in claims 15-17, 25, 29, 31, and 33; and
- more than 0.5% and at most 10% of at least one polyolefin comprising carboxyl grafts [polyolefin (POg)] ([0012]) as recited in claims 15, 26, 29-30, and 33, which is functionalized by grafting using at least one grafting agent chosen from ethylenically unsaturated carboxylic acids, their anhydrides and their metal salts, at least a portion of the carboxyl grafts of which is neutralized by a metal, optionally by the neutralization, concomitant with and/or subsequent to the grafting, of the carboxyl grafts by at least one metal base ([0076]), and which has been synthesized from a nonfunctionalized polyolefin (PO2), which is a random copolymer of between 94 and 98 weight % propylene units and of between 2 and 6 % ethylene units (PP 3020 GN3: [0131]) as recited in claims 15, 18-23, 29, and 33, the repeat units of which are derived from at least one ethylenically unsaturated monomer which has a different chemical nature from

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that of the repeat units of the nonfunctionalized polyolefin (PO1) ([0012 and 0031-0032]); and

- conventional additives for polyolefin compositions, such as **antioxidants, lubricants, fillers, colorants, nucleating agents, UV stabilizers**, antacids, metal-deactivating agents and **antistatic agents** ([0108]) as recited in claim 27; and

- an article comprising the composition (Coextrusion tie: [0001]) as recited in claims 28, 32, and 34.

It would have been obvious to one of ordinary skill in the art at the time of invention to have selected the overlapping portion of the ranges disclosed by the reference because overlapping ranges have been held to be a prima facie case of obviousness. In re Malagari, 182 USPQ 549.

Regarding the method limitations recited in claims 15, 29, and 33 the examiner notes that even though a product-by-process is defined by the process steps by which the product is made, determination of patentability is based on the product itself. In re Thorpe, 777 F.2d 695, 227 USPQ 964 (Fed. Cir. 1985). As the court stated in Thorpe, 777 F.2d at 697, 227 USPQ at 966 (The patentability of a product does not depend on its method of production. In re Pilkington, 411 F.2d 1345, 1348, 162 USPQ 145, 147 (CCPA 1969). If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process.).

Regarding limitations recited in claims 24 and 33 which are directed to specific properties of a material recited in said claim, it is noted that once a polyolefin is

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disclosed to comprise a material as recited in said claims, it will, absent an objective showing to the contrary, inherently display recited properties. See MPEP 2112.

Regarding claim 27, Pradel discloses all of the claims limitations as set forth above, but the reference does not explicitly disclose the composition having an additive content of up to 5 weight %. Since the instant specification is silent to unexpected results, the weight % of the additive in the composition is not considered to confer patentability to the claims. As the color and UV absorption are variables that can be modified, among others, by adjusting said additive content, the precise additive content would have been considered a result effective variable by one having ordinary skill in the art at the time the invention was made. As such, without showing unexpected results, the claimed additive content cannot be considered critical. Accordingly, one of ordinary skill in the art at the time the invention was made would have optimized, by routine experimentation, the additive content of the composition of Pradel to obtain the desired color and/or UV absorption (*In re Boesch*, 617 F.2d. 272, 205 USPQ 215 (CCPA 1980)), since it has been held that where the general conditions of the claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. (*In re Aller*, 105 USPQ 223).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN M. MAKSYMONKO whose telephone number is (571)270-3239. The examiner can normally be reached on Monday-Thursday, 7:30AM-5:00PM, and alternating Fridays 7:30AM-4:00PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Basia Ridley can be reached on 571-272-1453. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gwendolyn Blackwell/  
Primary Examiner, Art Unit 1794

JM  
21 April 2008